

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT BECKLEY

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 5:04-00130-01

MARK IVAN MCCLELLAND

MEMORANDUM OPINION AND ORDER

The court is proceeding on its own motion, brought pursuant to 18 U.S.C. § 3582(c)(2), to reduce defendant's sentence based on a subsequent reduction in the applicable sentencing guideline. On November 1, 2007, the United States Sentencing Guidelines were amended to reduce by two levels the guidelines in Section 2D1.1 for cocaine base (also known as crack). Subsequently, the Sentencing Commission amended Section 1B1.10 to make the crack amendment retroactive, effective March 3, 2008.

The court has received and considered the Original Presentence Investigation Report (PSI), the Judgment and Commitment Order and Statement of Reasons, addendum to the PSI from the Probation Office, memoranda filed by defendant and the United States, and other matters of record. The court has also considered the applicable factors under 18 U.S.C. § 3553(a), consistent with § 3582(c)(2), and public safety.

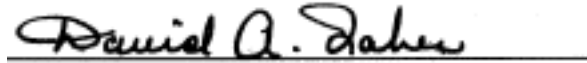
Having reviewed the materials of record, the court has determined that defendant's motion must be **DENIED**. As defendant concedes, no cocaine base was attributed to him at sentencing.

Accordingly, the guideline range applicable to defendant has not been lowered as a result of the amendment.

The Clerk is **DIRECTED** to send a copy of this Memorandum Opinion and Order to defendant, counsel of record, the United States Probation Office, and the United States Marshal for the Southern District of West Virginia.

It is SO ORDERED this 28th day of July, 2008.

ENTER:

A handwritten signature in black ink, reading "David A. Faber", is written over a horizontal line.

David A. Faber  
United States District Judge